

ESTTA Tracking number: **ESTTA209316**

Filing date: **05/05/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	WMM Holdings, LLC
Granted to Date of previous extension	05/03/2008
Address	5300 Old Pineville Road Charlotte, NC 28270 UNITED STATES
Correspondence information	Gary A. Hecker The Hecker Law Group, PLC 1925 Century Park East Suite 2300 Los Angeles, CA 90069 UNITED STATES ghecker@hh.com Phone:310-286-0377

Applicant Information

Application No	77059326	Publication date	03/04/2008
Opposition Filing Date	05/05/2008	Opposition Period Ends	05/03/2008
Applicant	SexTube, Inc. 499 N. Canon Drive, Suite 400 Beverly Hills, CA 90210 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. All goods and services in the class are opposed, namely: Entertainment services, namely, providing a website featuring adult entertainment; providing adult-related videos clips, pictures, on-line journals; namely blogs and other information in the field of adult entertainment
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	PORNOTUBE		
Goods/Services	adult entertainment services and goods		

Attachments	Opposition to PORNOTUBE.pdf (4 pages)(295348 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Maria T. Giammanco, Esq./
Name	Maria T. Giammanco, Esq.
Date	05/05/2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark application
Serial No. 77/059,326
Filed: December 7, 2006
For the Mark: PORNOTUBE
Published in the Official Gazette on: March 4, 2008

WMM Holdings, LLC)	
)	Opposition No. _____
)	
Opposer,)	
v.)	NOTICE OF OPPOSITION
)	
SexTube, Inc.,)	
)	
Applicant.)	
)	

To: The Trademark Trial and Appeal Board
Assistant Commissioner for Trademarks
P.O. Box 1451
Arlington, Virginia 22313-1451

WMM Holdings, LLC (“WMMH” and/or “Opposer”), a Nevada limited liability company, having its principal place of business at 5300 Old Pineville Road, Suite 160, Charlotte, North Carolina, 28217, believes that it will be damaged by registration of U.S. Trademark Application Serial No. 77/059,326 for the mark PORNOTUBE on or in connection with the use of that mark for: *“Entertainment services, namely, providing a website featuring adult entertainment; providing adult-related videos clips, pictures, on-line journals; namely blogs and other information in the field of adult entertainment”* in International Class 41 and, therefore, opposes registration of that mark pursuant to 15 U.S.C. § 1063(a).

As grounds of opposition, it is alleged that:

1. United States Trademark Application No. 77/059,326 seeking registration of the mark PORNOTUBE for “*Entertainment services, namely, providing a website featuring adult entertainment; providing adult-related videos clips, pictures, on-line journals; namely blogs and other information in the field of adult entertainment*” in International Class 41 (the “Opposed Mark”) was filed on December 7, 2006, and is based on Applicant’s alleged intent to use the Opposed Mark in commerce. The Opposed Mark was published in the Official Gazette for opposition March 4, 2008. The time for opposing was properly extended to May 3, 2008. Thus, this Notice of Opposition is timely filed.

2. WMMH itself and through its predecessor in interest, at least as early as July 2006 has been, and is now, using the trademark PORNOTUBE in connection with inter alia, entertainment services, including, but not limited to, providing a website featuring adult entertainment, and other adult entertainment services and goods. WMMH’s use, therefore, has been valid and continuous since at least as early as July 2006 and has not been abandoned. WMMH’s trademark is symbolic of extensive goodwill and consumer recognition built by WMMH through substantial amounts of time and effort in advertising and promotion.

3. WMMH has common law rights to the trademark PORNOTUBE used in connection with inter alia, entertainment services, including, but not limited to, providing a website featuring adult entertainment, and other adult entertainment services and goods that precede the Opposed Mark’s application date.

4. WMMH’s trademark PORNOTUBE is a famous mark.

5. The Opposed Mark is identical, or of such substantial similarity, to WMMH's trademark PORNOTUBE so as to create a likelihood of confusion, or to mislead, or to deceive as to source or affiliation when used in commerce on or in connection with the services set forth by Applicant.

6. The Opposed Mark, being identical to WMMH's trademark PORNOTUBE so as to create a likelihood of confusion, or to mislead, or to deceive as to source or affiliation when used in commerce on or in connection with the services set forth by Applicant will also dilute and/or tarnish WMMH's trademark PORNOTUBE.

7. Applicant's attempt to register the trademark PORNOTUBE for *"Entertainment services, namely, providing a website featuring adult entertainment; providing adult-related videos clips, pictures, on-line journals; namely blogs and other information in the field of adult entertainment"* should also be rejected for fraud. WMMH is informed and believes, and therefore alleges, that Applicant has engaged in the pattern and practice of registering or attempting to register trademarks owned by others in a bad faith effort to capitalize on the goodwill associated with those trademarks owned by others. Applicant, therefore, does not have, and never has had a bone fide intent to use the Opposed Mark despite its representation to the contrary to the Trademark Office.

WHEREFORE, WMMH prays that said Application No. 77/059,326 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of WMMH.


WMMH hereby appoints The Hecker Law Group, a law firm composed of Gary A. Hecker, James M. Slominski, Maria M. Giammanco, Andrea L. Mast and Frank M.

Weyer, all members of the bar of the State of California, to act as attorneys for WMMH herein, with full power to prosecute said opposition, to transact all relevant business with the Patent and Trademark Office and in the United States Courts and to receive all official communications in connection with this opposition.

Dated: May 5, 2008

Respectfully submitted,

THE HECKER LAW GROUP, PLC

By: 
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